

Federal Communications Commission

DA 99-2825

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Plainville and Larned, Kansas)

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MM Docket No. 99-361
RM-9777

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NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE

Adopted: December 8, 1999

Released: December 17, 1999

Comment Date: February 7, 2000

Reply Comment Date: February 22, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Radio, Inc. ("petitioner"), licensee of Station KFIX(FM), Channel 245C2, Plainville, Kansas, requesting the substitution of Channel 245C1 for Channel 245C2 at Plainville, and modification of its license to specify operation on the higher class channel. Additionally, to accommodate the requested allotment of Channel 245C1 at Plainville, petitioner also requests the substitution of Channel 255A for Channel 244A at Larned, Kansas, and modification of the license of Station KGTR(FM) to specify the alternate Class A channel. Petitioner states that it will apply for Channel 245C1 if allotted to Plainville, as requested.

2. In support of the proposal petitioner states that it is precluded from pursuing its modification by filing a one-step application due to the existence of Channel 244A at Larned. The distance between Station KFIX(FM)'s licensed transmitter site at Plainville at coordinates 39-01-15 NL and 99-28-12 WL and the licensed site of Station KGTR(FM) at Larned at coordinates 38-09-54 NL and 99-06-05 WL is 100.3 kilometers whereas a distance of 133 kilometers is required in this instance. Petitioner advises that the requested substitution of Channel 255A for Channel 244A at Larned would eliminate the short spacing deficiency. In further support of its modification request petitioner states that it would enable Station KFIX(FM) to provide 1 mV/m service to 52,614 persons in an area comprising 15,228 square kilometers, representing an increase of 15,995 persons (+44%) in 15,228 square kilometers (+108%) over its authorized Class C2 facility at Plainview. Further, petitioner asserts that the requested upgrade at Plainville would enable Station KFIX(FM) to provide an additional reception service to underserved areas. Specifically, petitioner advises that 255 people in an area of 308.9 square kilometers would receive a third

full-time reception service, while 3,136 people in an area of 1,129.8 square kilometers would receive a fourth full-time reception service, and 1,504 persons in an area of 975 square kilometers would receive a fifth full-time reception service. Further, petitioner asserts that if Channel 255A is substituted for Channel 244A at Larned, it would enable Station KGTR(FM) to increase its population coverage within its 1 mV/m contour from 7,699 persons in an area of 1,500 square kilometers to 8,585 persons in an area of 2,089 square kilometers, resulting in an 11.5% increase in population and a 39.3% increase in area to be served.¹

3. We believe the proposal warrants consideration since the allotment of Channel 245C1 at Plainview, Kansas, would enable Station KFIX(FM) to provide an expanded service to its community of license and surrounding areas. Therefore, as requested, we will propose to modify the license issued to Radio, Inc. for Station KFIX(FM) to specify the higher class channel in accordance with the requirements of Section 1.420(g) of the Commission's Rules. A staff engineering analysis has determined that Channel 245C1 can be allotted to Plainview consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules utilizing the licensed site of Station KFIX(FM) at coordinates 39-01-15 NL and 99-28-12 WL. Channel 255A can be allotted to Larned at Station KGTR(FM)'s presently licensed transmitter site at coordinates 38-09-54 NL and 99-06-05 WL.

4. Additionally, we shall direct an *Order to Show Cause* to Goodstar Broadcasting of Kansas, L.L.C., licensee of Station KGTR(FM), as to why its license should not be modified to specify operation on Channel 255A in lieu of Channel 244A at Larned, Kansas. Whenever an existing licensee or permittee is order to change its frequency of operation to accommodate a new channel allotment, Commission policy requires the benefiting party, or parties, to reimburse the affected station for the costs incurred. See, Circleville, Ohio, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee of Station KGTR(FM) for the reasonable costs associated with implementing the requested change in frequency at Larned.

5. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, to read as follows:

¹ Additionally, petitioner advises that if Channel 255A is substituted for Channel 244A at Larned, Station KGTR(FM) could ultimately upgrade to Channel 255C3 at its licensed site, a benefit not presently available to it on Channel 244A, and thereby increase its service to approximately four times its current population and more than 2-1/2 times its current service area. Alternatively, petitioner asserts that Station KGTR(FM) could be upgraded to Channel 255C2 if a new transmitter site is selected, which could result in the provision of a first and second full-time reception service to a significant number of people residing within substantial white and gray areas.

<u>Channel No.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Larned, Kansas	244A, 295C1	255A, 295C1
Plainview, Kansas	245C2	245C1

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Goodstar Broadcasting of Kansas, L.L.C., licensee of Station KGTR, Larned, Kansas, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 255A in lieu of Channel 244A, as proposed herein

7. Pursuant to Section 1.87 of the Commission's Rules, Goodstar Broadcasting of Kansas, L.L.C., may, not later than February 7, 2000, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Goodstar Broadcasting of Kansas, L.L.C., to furnish additional information. If Goodstar Broadcasting of Kansas, L.L.C. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Goodstar Broadcasting of Kansas, L.L.C., will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the licensee of Station KGTR, Larned, Kansas, as follows:

Goodstar Broadcasting of Kansas, L.L.C.
1660 N. Tyler Road
Wichita, Kansas 67212

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before February 7, 2000, and reply comments on or before February 22, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth

Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Susan A. Marshall, Esq.
Andrew S. Kersting, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street
11th Floor
Arlington, VA 22209

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules

and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.